

## **REMARKS**

Claims 1-2, 6, and 8-15 stand rejected under 35 U.S.C. 101 and claims 1-13 and 15-25 are rejected pursuant to 35 U.S.C. 103 as obvious over Fitzgerald (U.S. Pub. 2003/0191669A1) in view of Fitzgerald (U.S. Pub. 2003/0195771). As such, Applicant addresses below the rejection of claims 1-2, 6 and 8-15 under 35 U.S.C. 101, and claims 1-13 and 15-25 under 35 U.S.C. 103.

### **I. Request For Reconsideration**

Applicant respectfully requests reconsideration of the Examiner's rejections in the previously issued Official Action. Applicant respectfully submits that the previous amendments and remarks made in response to the Office Action were not fully considered by the Examiner in accordance with at least MPEP § 707.07 (a), (d), (e), (g), (i), and Applicant submits that the alleged entry of the prior was not sufficiently considered, at least in that a rejection consisting of more than a simple recycling of prior arguments is needed to comply with MPEP § 707.07 (a), (d), (e), (g), (i). Applicant respectfully submits that the remarks reiterated herein, in view of the currently entered amendments, place the claims of the instant application in condition for Allowance.

### **II. Rejections Pursuant to 35 U.S.C. 101**

Claims 1-2, 6, and 8-15 stand rejected under 35 U.S.C. 101 as being unpatentable as non-statutory subject matter.

35 U.S.C. 101 recites:

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”

The Supreme Court has stated that Congress intended statutory subject matter to “include anything under the sun that is made by man.” *See Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980). The Supreme Court has also specifically noted exceptions to this and identified three categories of unpatentable subject matter. These categories are: “laws of nature, natural phenomena, and abstract ideas.” *See Diamond v. Diehr*, 450 U.S. 175, 185 (1981). Practical application falling outside the laws of nature, natural phenomena, or abstract ideas is achieved when the claimed subject matter produces “a useful, concrete and tangible result.” *See State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02.

The Examiner again argues that the present invention claims merely "tracking," and “communicating with a database.” However, claim 1 does not say merely "tracking," but rather states "at least one computerized transaction database for relationally and electronically tracking." Applicant respectfully submits that the requirements of 35 U.S.C. 101 are satisfied if “the practical application of the abstract idea produces a useful, concrete and tangible result.” In *re Alappat*, 31 U.S.P.Q. 2d 1545, 1558 (Fed. Cir. 1994); *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 47 U.S.P.Q. 2d 1596, 1601-02 (Fed. Cir. 1998). The Office has also made the requirements for 35 U.S.C. 101 very clear in its own published materials:

“The Courts held that a machine (computer) programmed to transform data which represents discrete dollar amounts into a final share price through a series of mathematical calculations does, in fact, constitute the practical application of a mathematical algorithm, formula, or calculation because it produces “a useful, concrete and tangible result” i.e. the final share price upon which investors and their brokers can make investment decisions. See *State Street*, 149 F.3d at 1374-75, 47 USPQ 2d at 1602.

Millen et al, 35 U.S.C. 101 TRAINING MATERIALS, available at:  
<http://www.uspto.gov/web/menu/pbmethod/trangmaterials.ppt>, slide 7.

The pending amended claims entail sophisticated computer-implemented methods for an integrated point of service transaction management system for use by at least one health care service provider. **Quite simply, these sophisticated steps can only be performed by the computing terminals, processors, and relational databases and networks staed in, for example, amended claim 1.** These sophisticated methods are explicitly set forth in Section 101

as being patentable subject matter, and hence cannot be considered abstract ideas by the Examiner. Further, the integration of transactions for the realization of an increased collection rate results in the physical collection of money and is **thus a useful, concrete and tangible result, therefore explicitly constituting patentable subject matter in light of *State Street Bank*.**

Further, Applicant submits that, in accordance with Examiner's prior rejections, Applicant has made amendments which make clear that the present invention is computer implemented, and, as such, the invention as claimed is clearly concrete and tangible. In support of these amendments, Applicant respectfully directs Examiner to the USPTO's own guidance at <http://www.uspto.gov/web/offices/pac/compexam/examcomp.htm>, entitled "EXAMINATION GUIDELINES FOR COMPUTER-RELATED INVENTIONS."

Consequently, Applicant traverses the 35 U.S.C. §101 rejection and respectfully requests its reconsideration and removal. Applicant asserts that independent Claims 1 and 13 are in a condition for allowance.

Finally, Applicant submits that claims 2, 6, 8-12 and 14-15 are each ultimately dependent on one of claim 1 or 13, and, as such, each of claims 2, 6, 8-12 and 14-15 are also statutory claims pursuant to 35 U.S.C. 101.

### **III. Rejections Pursuant to 35 U.S.C. 103(a)**

Applicant again respectfully submits that any combination of Fitzgerald '669 and Fitzgerald '771: (a) is neither taught nor suggested, explicitly or impliedly, by any of the references or by the knowledge of one skilled in the art; and (b) fails to teach the claim limitations of at least the amended independent claims of the present invention.

The Office Action again states that Fitzgerald '669 fails to explicitly teach that the tracking correlates to an increased collection rate of at least one of self payments and overdue payments. Applicant wholeheartedly agrees with this assertion. However, Examiner then

proceeds to, once again, cite Fitzgerald '771, paragraph 22 and claim 5, in support of this proposition admittedly not taught in Fitzgerald '669.

The cited portion of Fitzgerald '771 is completely unrelated to Applicant's claimed invention. The cited portion of Fitzgerald '771 makes clear that Fitzgerald '771 is directed to "collating data related to a claim for a particular patient for submission to a **payer**" (emphasis added). *Para. 0022 of Fitzgerald '771*. Likewise, claim 5 is directed to whether "payment has been made by a **healthcare payer organization**" (emphasis added). *Claim 5 of Fitzgerald '771*. The "payer" in Fitzgerald '771 is clearly defined as the entity to whom "a claim submission is made" after Fitzgerald '771 generates "a completed claim to improve claim accuracy prior to claim submission to th[at] payer." *Abstract Fitzgerald '771*. **Thus, Fitzgerald '771 is solely dedicated to collecting payments from healthcare payer entities, such as insurance companies and HMOs.** Thus, Fitzgerald '771 has nothing to do with collecting copayments from patients at the point of service, as required by amended claims 1, 13 and 25. Simply put, the present invention has to do with collecting, by a doctor or hospital, of payments and copayments **due from patients** at the point of service, and **Fitzgerald '771 has only to do with submissions by doctors and hospitals to healthcare payer organizations** in order to improve collection of payments due from healthcare organizations, and as such is not related to collecting from patients.

Examiner has previously admitted that this claim element is not present in Fitzgerald '669, and, as explained above by Applicant, this claim element is also not present in Fitzgerald '771. **Even the most rudimentary understanding of the health care industry demands a conclusion that a healthcare payer, i.e., an insurer, has no relation to payments due from**

**the claimed patient.** Further, this claim limitation is present in each of amended claims 1, 13 and 25.

Thus, as explained in this and the previous response from Applicant, Fitzgerald '669 is directed to the use of an electronic system *by a patient*, whereas the claimed invention is directed to the use of an electronic system by a doctor or hospital, and Fitzgerald '771 is directed to improving *collection of payments from healthcare payer organizations* (insurance companies, HMOs), whereas the claimed invention is directed to improving collection of payments due from patients at the point of service. Thus, neither Fitzgerald '669 nor Fitzgerald '771 is applicable to the present invention, and as such at least amended independent claims 1, 13 and 25 are allowable over any combination of Fitzgerald '669 and '771.

Further, Examiner is presently advancing the **same arguments** as in the Official Action dated December 19, 2002 and failed in the present Official Action to comment or respond to Applicant's remarks filed on March 28, 2003. **Applicant respectfully submits that this constitutes improper "piecemeal" examination, in contravention of MPEP § 707.07(g).**

Finally, Applicant submits that each of claims 2-12 and 15-24 is ultimately dependent on one of claims 1 or 13, and as such, each of claims 2-12 and 15-24 stands allowable over any combination of Fitzgerald '669 and '771.

**IV. Conclusion**

Applicant respectfully requests early and favorable action with regard to the present Application, and a Notice of Allowance for all pending claims is earnestly solicited.

Respectfully submitted,

Drinker Biddle & Reath LLP

Dated: February 6, 2009

s/Thomas J. McWilliams/

Thomas J. McWilliams

Reg. No. 44,930

One Logan Square

18<sup>th</sup> & Cherry Streets

Philadelphia, PA 19103

Phone 215-988-2706

Attorneys for Applicant